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June 24, 2013

VIA ECF

Magistrate Judge Kathleen Tomlinson
Eastern District of New York
Long Island Federal Courthouse
944 Federal Plaza
Central Islip, New York 11722

Re: *Sidz, et al. v. E&M ESR, Inc., et al.*
Case No.: 12-cv-4525
Gebarowski v. E&M ESR, Inc., et al.
Case No.: 12-cv-5375


Dear Magistrate Judge Tomlinson:

In accordance with your Order dated May 28 (DKT 51 ¶ 4), Defendants write to request the Court strike one consent form filed in this case. As discussed at the Court conference on May 23, 2013, several individuals who filed Consents to Join this action are either time-barred by statute of limitation or are outside the temporal scope of the collective action in accordance with Judge Bianco's Order dated February 5, 2013. The parties have reached agreement regarding several of these individuals, and a Stipulation reflecting that agreement is being filed contemporaneously herewith. The current dispute concerns only Opt-in Plaintiff Adrian Czernecki (DKT 44). Mr. Czernecki last worked for Defendant E&M ESR, Inc. ("E&M") in December of 2009 (Exhibit 1, Pirog Aff. ¶ 3) and filed his consent form on April 23, 2013. Thus, he has no claim under the FLSA, even under the three-year limitations period for willful violations. 29 U.S.C. § 255; *Gonzalez v. El Acajutla Rest. Inc.*, 2007 U.S. Dist. LEXIS 19690, *12-17 (E.D.N.Y. Mar. 20, 2007). Through counsel, Plaintiff Czernecki has represented that his employment continued past this date.¹

Defendants request that the Court strike this Consent.

Respectfully submitted,

JACKSON LEWIS LLP


Jeffrey W. Brecher

NPT:dc
Enclosure

¹ In light of the parties' discussions on these issues, Defendants do not oppose a short extension of time – through Wednesday, June 26, 2013 – for Plaintiffs to respond to this application as to Mr. Czernecki.



Hon. A. Kathleen Tomlinson
USDC/EDNY
June 24, 2013
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cc: Lloyd R. Ambinder, Esq. (via ECF)
James E. Murphy, Esq. (via ECF)
Jack L. Newhouse, Esq. (via ECF)
Justin Reilly, Esq. (via ECF)
Noel P. Tripp, Esq. (internal)

4817-2665-5252, v. 5

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANTS
58 South Service Road, Suite 410
Melville, New York 11747
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ATTORNEYS OF RECORD:
JEFFREY W. BRECHER, ESQ.
NOEL P. TRIPP, ESQ.

-----X
DARIUSZ SIDZ, TOMASZ ORZECOWSKI, and
ARKADIUSZ WAKULUK, individually and on behalf
of all other persons similarly situated who were
employed by E&M ESR, INC., and/or any other
entities affiliated with, controlling, or controlled by
E&M ESR, INC. and/or MAGDALENA
PALUCHIEWICZ and ERNEST PIROG,

Plaintiffs,

Case No. 12-cv-4525

vs.

E&M, ESR, INC., MAGDALENA PALUCHIEWICZ,
AND ERNEST PIROG, and/or any other entities
affiliated with, controlling, or controlled by E&M
ESR, INC., MAGDALENA PALUCHIEWICZ, and/or
ERNEST PIROG,

Defendants.

NINA GEBAROWSKI, and on behalf of all others
similarly situated,

Plaintiff,

Case No. 12-cv-5375

vs.

E&M, ESR, INC. and MAGDALENA R.
PALUCHIEWICZ,

Defendants.
-----X

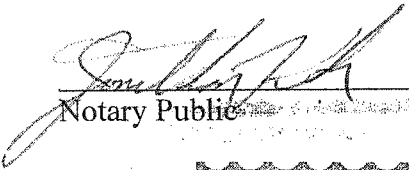
STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Sebastian Pirog, deposes and says:

1. I serve as the Director of Operations for Defendant E&M, ESR, Inc. ("E&M"). In that role, I am familiar with E&M's workforce, including their dates of employment. This affidavit is based on my personal knowledge. I am submitting this affidavit support of E&M's request to strike certain consent forms from this lawsuit.
2. Piotr Sobolak's last full week of work for E&M was the week ending April 9, 2010. My understanding is his consent form was filed in this action on April 11, 2013.
3. Adrian Czernecki last worked for E&M in December of 2009. My understanding is his consent form was filed in this action on April 23, 2013.
4. Pawel Chelstowski and Samuel Hoskins commenced work for E&M after January 1, 2012. Specifically, Mr. Chelstowski's start date was March 12, 2012, and Mr. Hoskins' start date was February 15, 2012.


SEBASTIAN PIROG

Sworn to and subscribed before me
this 14th day of June, 2013.


Notary Public

4812-9864-0148 v. 2

